



Testimony of:  
Save the Sound  
a program of Connecticut Fund for the Environment



**In Partial Opposition and Partial Support of**  
**S.B. 459 AAC LOCAL CONTROL OVER COASTAL AREAS**

**S.B. 460 AAC COASTAL PROTECTION MEASURES, ROUTINE MAINTENANCE AND REPAIR  
OF SHORELINE STRUCTURES, STATE-WIDE POLICY CONCERNING WATER RESOURCES  
AND PROCEDURES OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL  
PROTECTION.**

Before the Planning and Development Committee

March 18, 2013

Submitted by Leah Schmalz, Dir. of Legislative and Legal Affairs

*Connecticut Fund for the Environment is a non-profit organization that, along with its regional program Save the Sound, works to protect and improve the land, air and water of Connecticut and Long Island Sound on behalf of its 5,500 members. We develop partnerships and use legal and scientific expertise to achieve results that benefit our environment for current and future generations.*

Dear Senator Cassano, Representative Rojas, and members of the Committee:

Thank you for the opportunity to comment on Senate Bill 459, AAC Local Control Over Coastal Areas and Senate Bill 460, AAC Coastal Protection Measures, Routine Maintenance and Repair of Shoreline Structures, State-Wide Policy Concerning Water Resources and Procedures of the DEEP.

Save the Sound, a program of Connecticut Fund for the Environment **opposes SB 459's sections 1 & 2 and supports its section 3 and opposes SB 460's sections 1, 2 and the changes to "inhabitable structure" in section 4 and supports the CAD cell portion of its section 4, as well as its section 5.**

**Background:**

In less than two years, the Long Island Sound region has been walloped by four major storms — two tropical storms and two snowstorms. Though only some hit Connecticut directly, all four were direct hits on our infrastructure, economy and way of life.

Not only have these storms increased in frequency, they are bringing higher rain amounts, winds, and storm surges — often at historic levels. Sandy brought Bridgeport a 13.3-foot storm surge, even higher than the 12.1-foot surge that hit the city during Tropical Storm Irene.

In Connecticut, we've begun the process of adapting to effects of climate change. Over the past five years, universities have helped identify new policies, agencies and non-profits have created coastal resiliency tools, and the Governor's office has established workgroups to review natural resources and infrastructure in light of our changing climate. The state has used this information to start taking action, most notably through the first steps of last session's sea level rise bill (P.A. 12-101) and currently through recommendations provided by the Shoreline Preservation Taskforce and found in the four bills before Environment Committee. But more must be done—including learning from the difficult lessons provided by Storms Irene and Sandy. A key one is that natural systems are a critical component to our shoreline preservation and that there is a great need to enhance our coasts' resiliency in the face of climate change.

A recent study by The American Littoral Society (ALS), with support from the National Fish and Wildlife Foundation, quickly assessed coastal impacts of Hurricane Sandy on a regional scale – from the Delaware Bay through Long Island Sound.<sup>1</sup> The results of the study are telling, and provide context for both bills before you today.

The report demonstrates the success of “natural systems” to both protect human communities and survive the storm. Dunes, bluffs, marshes, barrier and bay islands protected park facilities and other commercial, residential and community structures. A few regional examples of natural systems protecting the coast include:

- A newly constructed roadway system was protected from damage when dunes just seaward absorbed the storm surge at Cape May Wildlife Refuge;
- Dunes at Seaside Park, NJ were credited with protecting oceanfront homes constructed behind the park;
- The Wildwoods Convention Center and a historic home at the Bayshore Waterfront Park in New Jersey were both spared because dune systems seaward from these structures absorbed Sandy’s surge and waves; and
- Small dune systems on Chalker beach in Old Saybrook, CT absorbed erosional forces and appears to have protected two residential houses behind them, while many other exposed homes along the beach suffered substantial damage.

In Long Island Sound several restoration projects provided success stories as well, they include:

- The restored Long Beach dune system in Bridgeport and Stratford CT (naturalized after cottage removal) that functioned well;
- The breaching of undersized culverts along a tidal creek at Sunken Meadow State Park on Long Island, leading to restoration of 100 plus acres of tidal marsh; and
- A restored dune at Rocky Neck State Park in Old Lyme, CT absorbed storm and wave damage and largely protected the Amtrak NE corridor directly behind the dune from extensive damage.

As individuals, municipalities and the state all grapple with how best to protect homes, critical infrastructure and our natural coastal landscapes, the ALS report shows that it is essential that we work with our natural landscapes, not against them.

Unfortunately some of the bills before you today could have significant negative impacts on our shoreline, by encouraging the proliferation of damaging seawalls and reducing the ability of DEEP to properly regulate coastal structures. More intense storms will require stronger and more specific guidelines for shoreline development, not weaker ones.

**SB 459, An Act Concerning Local Control Over Coastal Areas**, dramatically and damagingly exempts seawalls, and other structures impacting the coastal zone, from both local and state regulation.

*Sections 1 & 2* allow construction of seawalls, decks extending up to 10’ waterward of the Coastal Jurisdiction Line (“CJL”) (which in some cases could extend into the public trust area of our shoreline), and any structural components used to support a residence, aside from a foundation.

First, the section on “structural components” is vague. Without providing definitions for “structural” “components” or “support” there could be confusion as to the application of this section. Additionally, it is unclear if residence refers to only inhabited structures, or any part of a residential property.

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<sup>1</sup> <http://www.nfwf.org/Content/NavigationMenu/HurricaneSandyResponse/Assessments/default.htm>

Second, by exempting all seawalls from regulation SB 459 undermines recently enacted P.A. 12-101, which encouraged the use of natural systems. It also puts our shoreline at risk allowing for the unfettered proliferation of un-reviewed structures—a situation which not only endangers the environmental health of the Sound, but also public safety.

Third, by allowing decks to extend 10' waterward of the CJL without municipal or state oversight, SB 459 codifies the legitimacy of situations which could impinge the public trust resources of the state. Depending on the proximity of the Mean High Tide Line—the start of the public trust—to the CJL, 10' over the CJL towards the Sound could in fact be within the public trust area. With the exemption from DEEP review that this bill provides, landowners will be the sole arbiter of private or public use on that public trust land.

Enabling these types of construction without review or permit virtually guarantees damage to natural resources.

Section 3 encourages use of sand and sediment for beach restoration project. This is a good idea that we support, but it does need additional detail. We hope the Committee works closely with DEEP to refine the language and to create a workable plan.

**SB 460, An Act Concerning Coastal Protection Measures, Routine Maintenance and Repair of Shoreline Structures, State-Wide Policy Concerning Water Resources and Procedures of the DEEP**, will perpetuate the existence of outdated and illegal coastal structures. Sections 2 and 4 are particularly problematic.

Section 2 takes a huge step backward by undermining DEEP's authority to enforce the law. It would require DEEP to issue a retroactive Certificate of Permission for any structure, dredging activity etc., done before 1995—even if that original activity was done illegally—if DEEP or the locality did not send a notice of violation before last October. It also calls into question the impact on future owners of properties with such projects. Currently, DEEP can allow maintenance on such a structure when appropriate, but this bill would *require* them to do so and removes the applicant's obligation to prove that the activity complies with current standards. This would let homeowners replace an old, illegal seawall or deck with a new one without additional review by DEEP. Thus, this provision sets up a perpetual situation that could result in structures which never come into compliance with state standards.

Section 2 also changes the date after which many structures and other coastal projects are grandfathered into the law from 1939 to 1995. (The current law means that most grandfathered structures successfully weathered the Great New England Hurricane of 1938.) Because our shoreline has been increasingly built up in recent decades, this greatly increases the number of inappropriate seawalls, buildings, decks and docks that can continue to be rebuilt again and again despite storm damages.

Thirdly, Section 2 cuts the time DEEP has to issue a permit decision by 33%—from 45 days to 30—and declares that any permit not issued by that deadline is automatically approved. (That wetlands and dredging activities are excluded from this is positive, however.) DEEP has done a good job in recent years of reviewing permits more quickly, but the agency remains understaffed and shortening this timetable means that inevitably some damaging structures will be approved by default.

Section 4 would allow structural solutions not only when necessary to protect “inhabited structures” (homes) but to protect “properties developed.” This means seawalls could be built to protect pools, sheds or lawns—a vast overreliance on a measure that should be used sparingly.

Save the Sound supports the provision in Section 4 that encourages cooperative CAD cell development for dredge material disposal. This technique has been successfully, and cost-effectively, used in other parts of New England and if coordinated appropriately, could be an economical option for smaller dredging projects in Connecticut.

### **Conclusion**

Scientists say the Long Island Sound region will likely see a sea level rise of 1.5 feet by 2050, and 3.5 feet above current levels by the century's end. If levels rise as predicted, not only will we lose shoreline areas and infrastructure, but increased flooding and storm surges will cause more damage in future storms. Implementing ways to protect our shoreline is a long-term project, and will require serious commitment and investment by the region. The Shoreline Preservation Taskforce has done an admirable job of sifting through information and developing recommendations on complex issues and the state must keep up the momentum. We cannot afford, financially or environmentally, to constantly rebuild our state after these storms. By identifying opportunities to protect and restore existing coastal marshes and expand the use of green infrastructure techniques we can allow for marsh retreat inland, buffer homes and infrastructure against waves, and absorb heavy rains and flooding. Unfortunately SB 459 and SB 460 do none of those things, instead they look to weaken coastal protections and oversight, and encourage hardened—not resilient—shorelines. We ask that you **strike sections 1 & 2 of SB 459 as well as sections 1, 2, and the changes to "inhabitable structure" in section 4 of SB 460. We also ask that you help build a balanced approach that protects our homes and natural resources by supporting SB 1010, SB 1012, SB 1013 and SB 1014 from the Shoreline Taskforce and allowing time for the provisions of P.A. 12-101 to work.**

Thank you for your consideration

Sincerely,

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